

APPEAL NO. 020440  
FILED APRIL 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 15, 2002. The hearing officer resolved the disputed issue before him by determining that the respondent's (claimant) spinal surgery should be approved. The appellant (carrier) appealed on sufficiency grounds. There is no response from the claimant in the file.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's spinal surgery should be approved. Section 408.026(a)(1) provides that, except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only if before surgery, the employee obtains from a doctor approved by the carrier or the Texas Workers' Compensation Commission a second opinion that concurs with the treating doctor's recommendation. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)) provides, in relevant part, that the term "concurrence" means "[a] second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e., cervical, thoracic, lumbar, or adjacent levels of different areas of the spine) that are likely to improve as a result of the surgical intervention." Presumptive weight will be given to the two concurring opinions and they will be upheld unless the great weight of medical evidence is to the contrary. Rule 133.206(k)(4).

The parties stipulated that the recommending surgeon and the claimant's second opinion doctor concurred in the recommendation for spinal surgery. The carrier asserts that the great weight of the other medical evidence, which establishes that the claimant should not have surgery, is contrary to the concurring opinions. This was a question of fact for the hearing officer to resolve. See Texas Workers' Compensation Commission Appeal No. 960979, decided July 9, 1996 (Unpublished). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record demonstrates that the determination that the great weight of the other medical evidence is not contrary to the two opinions in favor of surgery is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the hearing officer's determination that the carrier is liable for the cost of spinal surgery on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**THE CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge